(2)
Supreme Court, U.S.
FILED
No. 05-16 JUN 27 2005
OFFICE OF THE CLERK

IN THE

United States Supreme Court

TED HERRING,

Petitioner.

v.

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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June 27, 2005

CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Eleventh Circuit erred in denying a meritorious claim under *Clemons v. Mississippi*, 494 U.S. 738 (1990) by applying a standard of procedural default that directly conflicts with this Court's decisions in *Miller-El v. Dretke*, No. 03-9659, 2005 WL 1383365 (U.S. June 13, 2005) and *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992).

2. Whether the Eleventh Circuit erred in denying, without the benefit of a state or federal evidentiary hearing, a claim of ineffective assistance of counsel where defense counsel's performance fell below the standard of diligence established by this Court in *Rompilla v. Beard*, No. 04-5462, 2005 WL 1421390 (U.S. June 20, 2005), *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Williams v. Taylor*, 529 U.S. 362 (2000).

3. Whether the Eleventh Circuit erred in declining to grant a certificate of appealability to consider a claim pursuant to *Estelle v. Smith*, 451 U.S. 454 (1981), where a probation officer had interviewed a defendant while in custody, failed to administer *Miranda* warnings, and elicited racially inflammatory statements that were introduced without any prior notice at trial.

LIST OF PARTIES

Petitioner Ted Herring is the only party seeking review of the judgment below.

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Ted Herring ("Herring" or "petitioner") respectfully petitions this Court for a writ of certiorari to review the March 29, 2005 and January 31, 2005 decisions of the Eleventh Circuit, the former denying his petition for rehearing or rehearing *en banc* and the latter affirming the denial of his petition for a writ of habeas corpus.

OPINIONS AND ORDERS BELOW

The judgment and sentence of the Volusia County, Florida Circuit Court was entered on March 1, 1982. (A-6.[1]) The findings of the trial judge with respect to aggravating and mitigating circumstances were entered on March 1, 1982. (A-8.) The decision of the Florida Supreme Court affirming Herring's conviction and death sentence is reported at *Herring v. State*, 446 So. 2d 1049 (Fla. 1984). (A-15.) The order of the Florida Circuit Court denying Herring's Rule 3.850 Motions to Vacate Judgment was entered on July 25, 1985. (A-78.) Decisions of the Florida Supreme Court addressing and ultimately denying Herring's 3.850 motions, entered on December 30, 1986, June 23, 1988, and May 2, 1991, are reported at *Herring v. State*, 501 So. 2d 1279 (Fla. 1986), *Herring v. Dugger*, 528 So. 2d 1176 (Fla. 1988), and *Herring v. State*, 580 So. 2d 135 (Fla. 1991). (A-33, 40, 48.) The decision of the United States District Court for the Middle District of Florida denying Herring's petition for a writ of habeas corpus was entered on April 14, 2003 (A-88.) The decision of the United States Court of Appeals for the Eleventh Circuit affirming the district court, entered on January 31, 2005, is reported at *Herring v. Sec'y, Dep't of Corr.*, 397 F.3d 1338 (11th Cir. 2005). (A-147.) The Eleventh Circuit denied Herring's petition for rehearing or rehearing en banc on March 29, 2005. (A-189.)

[1] The Appendix hereto is cited as "A-__."